

Exhibit B

Part 3

FRITZ - CROSS EXAMINATION / CURRAN

1 Q Sorry, not engaging in --

2 A In the conversations.

3 Q In conversations? As you read this, was Mr. Green engaged
4 in price-fixing?

5 MR. SILBERFELD: Objection, speculation.

6 MR. CURRAN: I'm just basing it on the document,
7 Your Honor.

8 THE COURT: Overruled.

9 You can answer.

10 THE WITNESS: So, again, I don't recall this specific
11 information or email. And, while it looks like they were
12 talking about things, there's nothing in here to suggest they
13 were talking about pricing.

14 BY MR. CURRAN:

15 Q Okay. So, in your judgment, Mr. Green may have been
16 violating Best Buy corporate policy, but not engaged in
17 price-fixing?

18 A I can't speak to that, because I don't actually understand
19 -- I don't know the specific situation.

20 MR. CURRAN: Your Honor, another document that's been
21 admitted into evidence is 5552.

22 (Document handed up to the Court)

23 (Document displayed)

24 MR. CURRAN: May I approach the witness?

25 THE COURT: You may.

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1 (Document handed up to the Court)

2 (Witness examines document)

3 **BY MR. CURRAN:**

4 **Q** Ms. Fritz, please take a moment to familiarize yourself
5 with 5552.

6 (Witness examines document)

7 **A** Okay.

8 **Q** Okay. So now, Ms. Fritz, this, the last in time email
9 here-is-another email from Philip Britton to Mike Ray, correct?
10 Or, I'm sorry, from Mike Ray to Philip Britton?

11 **A** The most recent? Or the top one?

12 **Q** Yes.

13 **A** Yes, it appears that way. It is really hard to read, but
14 the --

15 **Q** True. The first-in-time email, which is on the second
16 page, which starts the chain, is from Douglas Jacobsen.
17 Correct?

18 **A** Um, yes.

19 **Q** And Mr. Jacobsen writes (As read):

20 "FYI...The information below was given to me from an
21 acquaintance at our competitor. The information should be
22 very reliable."

23 And then it continues:

24 "Effective November 29th cc's price match policy will be
25 changing."

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1 And then it goes on to give details about the changes in
2 Circuit City's price match policy. Correct?

3 A Correct.

4 Q And this email is dated November 18, 2006. Correct?

5 A It appears that way, yes.

6 Q Okay. So that, that email indicates a discussion or -- or
7 information being provided from an acquaintance of Mr. Jacobsen
8 at Circuit City. Correct?

9 A I don't know. I don't know who Mr. Jacobsen is, or who
10 Mr. Rogers is.

11 Q Farther up the email chain there is the -- second-to-last
12 in time, there is an email from Mike Ray. Do you see that one?
13 Dated November 19, 2006, at 3:28 p.m.?

14 A I do.

15 Q Now, Mike Ray, you know; we've talked about him already.
16 He was an employee, senior employee at Best Buy. Correct?

17 A Correct.

18 Q And, he writes (As read):

19 "Glen.. On it.. We're going to have the teams ping their
20 contacts to validate this change is hitting all markets."

21 Do you see that?

22 A Yes.

23 Q And, by that email, Mr. Ray was stating that the team at
24 Best Buy or the teams at Best Buy would be pinging their
25 contacts at Circuit City. Correct?

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1 **A** It just says pinging their contacts. It does not say
2 where.

3 **Q** Okay. Do you know what contacts Mr. Ray was referring to
4 here?

5 **A** I do not.

6 **Q** One more document in this set, Ms. Fritz.

7 **MR. CURRAN:** Your Honor, this is 5587, the last of
8 the four stipulated to.

9 (Document handed up to the Court)

10 **MR. CURRAN:** May I approach the witness?

11 **THE COURT:** You may.

12 (Witness examines document)

13 **THE WITNESS:** Okay.

14 **BY MR. CURRAN:**

15 **Q** Ms. Fritz, you have 5587 in front of you, and you've
16 reviewed it?

17 **A** I have.

18 **Q** I would like to direct your attention to Ms. Ayala's
19 email, dated Sunday, December 31, 2006, at 1:09 a.m.

20 And specifically, about halfway down that email on that
21 page, there's a paragraph that says:

22 "With that done I went and found my good friend who is an
23 operations manager at Hulen (not the same manager that
24 verified the info the other day) and ask him. He told me that
25 they did lower prices on much of their floor trying to compete

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1 price wise but that when it came to warranty's we still beat
2 them. Our highest priced warranty is \$600 but they have one
3 that is 1,000 and does little more than our \$600 one."

4 Do you see that?

5 **A** I do.

6 **Q** And the re line or the subject line on this email is
7 "Circuit Information," correct?

8 **A** The subject line does say "Circuit Info," yes.

9 **Q** Okay. Ms. Fritz, is it, in your judgment, consistent with
10 Best Buy's corporate code of ethics for a Best Buy employee to
11 be having a discussion with a good friend at a Circuit City
12 store about pricing and warranties?

13 **A** Well, I don't -- I don't know anything about this specific
14 instance, but it doesn't say that her good friend is a person
15 at Circuit City or where they're from.

16 **Q** And this is referring to a Circuit City store at Hulen,
17 near Dallas-Fort Worth, isn't it?

18 **A** I don't know. I don't know what Hulen is.

19 **MR. CURRAN:** Your Honor, I would like to show a clip
20 from the deposition of Philip Britton, and then ask the
21 witness if she agrees with the testimony provided.

22 This is a clip that's been agreed to by stipulation.

23 **THE CLERK:** Is this marked as an exhibit? Is she
24 going to transcribe it?

25 **THE REPORTER:** (Shakes head)

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1 **MR. CURRAN:** We'll provide that afterwards.

2 **THE CLERK:** So, let's mark it.

3 **MR. CURRAN:** Okay.

4 **THE CLERK:** Okay.

5 **MR. CURRAN:** Show it.

6 **THE CLERK:** What are we going to mark it as?

7 Whose --

8 (Off-the-Record discussion between counsel)

9 **THE COURT:** Ladies and gentlemen, what's going on
10 here is we have deposition testimony on videotape that
11 ordinarily I think Best Buy -- or Toshiba would be putting on
12 when it's Toshiba's turn to put evidence on in this case. It
13 relates, however, because this is from a Best Buy employee, to
14 some of the testimony that this witness has been giving.

15 And I think in an effort -- all parties are making an
16 effort to allow this witness to testify and go home, rather
17 than have to come back later on in this trial. So, therefore,
18 they have agreed, and I've allowed, that these video clips be
19 played kind of in the middle of her testimony.

20 Is that about what we are doing here?

21 **MR. SILBERFELD:** Yes, Your Honor.

22 **THE COURT:** So, that's what we're about to do. And
23 this witness is -- was -- was an employee of Best Buy. Right?

24 **MR. SILBERFELD:** Yes.

25 **THE COURT:** The one whose emails we have been looking

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1 at.

2 MR. SILBERFELD: Yes.

3 MR. CURRAN: Still is.

4 THE CLERK: So, what is the name again?

5 MR. CURRAN: Britton, B-R-I-T-T-O-N.

6 THE CLERK: Okay, and that is 10001.

7 (Trial Exhibit 10001 received in evidence)

8 (Short portion of videotaped deposition of Philip Britton
9 played, not reported)

10 BY MR. CURRAN:

11 Q Ms. Fritz, in your judgment, is maintaining a network or
12 contacts with competitors an acceptable part of competitive
13 intelligence?

14 A I think it depends on what information, but again, talking
15 with competitors is not something we should be doing, in my
16 interpretation. Obviously, Mr. Britton has a different
17 opinion.

18 Q And he was the head of the competitive field unit at
19 Best Buy during the relevant period. Correct?

20 A He was the manager of competitive intelligence. He
21 reported in to Mike Ray.

22 (Reporter interruption)

23 THE WITNESS: Ray.

24 BY MR. CURRAN:

25 Q Ms. Fritz, the competition between Best Buy and its

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1 competitors at the retail level was considerable during the
2 relevant period. Correct?

3 A Always.

4 Q Always. Would you characterize it as fierce?

5 A No, I wouldn't say fierce. I'd say aggressive.

6 Q Aggressive. And Best Buy has been a survivor of that
7 competition, correct?

8 A Um, of certain competition. We have other competitors
9 today.

10 Q But, many of the competitors that Best Buy had during the
11 '98-'06 time frame are no longer in business, correct?

12 A I wouldn't say many. I would say there's a few. Like
13 Circuit City.

14 Q Pardon me?

15 A Like Circuit City.

16 Q Like Circuit City. So, Circuit City did not survive the
17 competitive crucible in the marketplace, correct?

18 A I wouldn't phrase it that way.

19 Q Okay. You -- you tell me, please. What happened to
20 Circuit City?

21 A Circuit City went out of business for a variety of
22 reasons. Right? One being their inability to manage their
23 business in a financially-astute way.

24 Q Okay. Now, we have talked a lot about the competitive
25 intelligence unit headed by Mr. Britton and Mr. Ray, or headed

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1 by Mr. Ray and managed by Mr. Britton.

2 Are you aware that they had, at certain points in time,
3 dozens and dozens of field agents who were going into Circuit
4 City stores around the country?

5 A I was aware that they had agents. I wasn't aware that it
6 was dozens and dozens, or the specifics of the numbers.

7 Q And, were you aware that during the relevant time frame,
8 those agents were responsible for going into Circuit City
9 stores and figuring out what Circuit City was charging on
10 products?

11 A I was aware that they were visiting stores to understand
12 what promotions were going on, what products they were
13 carrying, and what prices were for the purposes of gathering
14 the information, yes.

15 Q Are you aware of how those agents recorded or memorialized
16 the prices that they saw while walking through a Circuit City
17 store?

18 A I am not.

19 Q Are you aware of whether or not Circuit City people came
20 into Best Buy stores and observed and recorded Best Buy
21 pricing?

22 A It -- it was pretty common practice. So, I can't say
23 specifically, but I do believe that other competitors on a
24 consistent basis would come in, again, looking at our product
25 assortments, looking at our promotions and our merchandising,

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1 as well as our retail pricing.

2 Q Did Best Buy try to stop that from happening?

3 A No, not to my knowledge.

4 Q Why not?

5 A Because it was a practice to gather information.

6 Q Was it unethical for these companies to gather
7 competitors' pricing in that manner?

8 A No, I don't think it's unethical to gather competitive
9 intelligence.

10 Q Was it a matter of professional courtesy for Circuit City
11 and Best Buy and other retailers to allow competitors to come
12 into their stores to record current and future pricing?

13 A I -- I don't know if I would say it was a courtesy. I
14 think in a lot of cases we didn't know it was happening, or who
15 it was. But, again, it was generally understood in the
16 industry that it was one way of gathering competitive
17 information.

18 MR. CURRAN: Your Honor, if we are going to take an
19 afternoon break, now would be a good time.

20 THE COURT: What I would like to do, if we can, is
21 take one, but keep it short.

22 MR. CURRAN: Of course.

23 THE COURT: So, how about we come back at quarter to
24 3:00? Will that do it? And then, we'll go through to 3:30.
25 Thank you.

PROCEEDINGS

1 Please don't speak with each other, or anyone else.

2 (Jury excused)

3 (Recess from 2:35 to 2:50 p.m.)

4 (The following proceedings were held in open court,
5 outside the presence and hearing of the jury)

6 **DEPUTY CLERK:** Come to order.

7 **THE COURT:** Are you ready?

8 **MR. CURRAN:** I am, your Honor.

9 **MR. SILBERFELD:** Your Honor, I have a request first.

10 **THE COURT:** Oh, okay.

11 **MR. SILBERFELD:** I've asked counsel -- I told counsel
12 yesterday Miss Fritz has to leave at the end of the day. I
13 asked for some time estimates. I haven't gotten any, as
14 recently as a minute ago.

15 And I'm asking that the Court impose some time limits both
16 on Mr. Curran's exam, and poor Mr. Freitas hasn't had a chance
17 to ask a question. I need about five minutes for redirect.
18 I'd like to get all this accomplished by the end of the day.
19 The direct took an hour and two minutes. We've been an hour
20 and a half on --

21 **THE COURT:** You think you're going to finish?

22 **MR. CURRAN:** I think I won't finish, your Honor.

23 **THE COURT:** Can't she come back?

24 **MR. SILBERFELD:** Because she's on the stand, I
25 haven't talked to her, but it's just excessive at this point

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1 to spend an hour and a half on a single topic when the direct
2 was an hour and two minutes.

3 **MR. CURRAN:** If I need to respond --

4 **THE COURT:** No, you don't, and I'm really sorry for
5 the inconvenience, to the extent that there is one, but I
6 don't feel I can limit him in that way.

7 If this particular time is a really bad time, we can
8 probably gauge it and come back when it's convenient. But --

9 **MR. SILBERFELD:** I'll talk to the witness after.

10 **THE COURT:** Sure, sure.

11 (The jury enters the courtroom)

12 **THE COURT:** Welcome back, ladies and gentlemen. You
13 may all be seated.

14 All right. You may proceed, Mr. Curran.

15 And you're still under oath.

16 **MR. CURRAN:** Thank you, your Honor.

17 **CROSS-EXAMINATION, RESUMED**

18 **BY MR. CURRAN:**

19 **Q.** Miss Fritz, Circuit City wasn't the only competitor of
20 Best Buy's that went out of business in the last 10 years,
21 right?

22 **A.** Well, they're the only major one I can recall.

23 **Q.** Was Comp USA one that went out of business?

24 **A.** I think they actually have a few stores in certain places.

25 **Q.** But it's a pretty serious retrenchment?

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1 A. I can't speak to that.

2 Q. Let's review again the prime competitors you had during
3 that period, '98 to 2006. Was Circuit City your closest
4 competitor?

5 A. They, along with Wal-Mart.

6 Q. Wal-Mart.

7 A. Uh-huh.

8 Q. And who else?

9 A. Like I said, Circuit City, Wal-Mart, Office Depot, Office
10 Max, Staples, Comp USA. Those are the big ones I can remember.

11 Q. Miss Fritz, is there something at the Best Buy
12 headquarters where a mock hospital ward is set up, or has been
13 set up in the past?

14 A. Mock hospital ward. Can you be more specific about your
15 question?

16 Q. Yeah. Like some sort of a mock hospital ward showing
17 competitors in poor health?

18 A. I think there's something in our leadership institute, but
19 I can't say I've actually been there in years to see what it
20 is. So I can't speak to the details.

21 Q. What have you heard about this?

22 A. I've heard a long time ago that there was a -- there was
23 an area in our leadership institute that talked about some of
24 the competitors that had gone before us, if you will.

25 Q. And did you hear it was set up as some sort of a hospital

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1 ward?

2 **A.** No, not to the extent I think that you're implying.

3 **Q.** I don't want to belabor this, but to what extent did you
4 hear -- did it resemble a hospital in some way?

5 **A.** I do not recall.

6 **MR. CURRAN:** Your Honor, I'd like to hand out another
7 document. This one is 8142.

8 **THE COURT:** Is this one of the stipulated ones?

9 **MR. CURRAN:** No, it's not, your Honor. We're on a
10 new subject. May I approach the witness?

11 **THE COURT:** You may.

12 **BY MR. CURRAN:**

13 **Q.** Miss Fritz, do you have 8142 in front of you?

14 **A.** I do.

15 **Q.** Would you like a moment to review it?

16 **A.** I would.

17 Okay.

18 **Q.** Miss Fritz, Exhibit 8142 is an email to you and others at
19 Best Buy attaching a PowerPoint presentation, correct?

20 **A.** It appears that way, yes.

21 **MR. CURRAN:** Your Honor, I move for the admission
22 into evidence of Exhibit 8142.

23 **MR. SILBERFELD:** No objection.

24 **MR. FREITAS:** No objection, your Honor.

25 **THE COURT:** Thank you. It will be received.

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1 (Trial Exhibit 8142 received in evidence)

2 BY MR. CURRAN:

3 Q. So Miss Fritz, you are a cc on this email, correct?

4 A. Yes, correct.

5 Q. Along with a group of colleagues, including Jason Bonfig,
6 correct?

7 His name, I believe, is on the top line of the cc's?

8 A. Oh, yes.

9 Q. This is a BTS update. That's back-to-school, correct?

10 A. Yes.

11 Q. And this competitive update deals in part at least with
12 Circuit City, right?

13 A. It appears that we're providing some updates on Circuit,
14 yes.

15 Q. And the email cover, about two-thirds of the way down, has
16 a reference to, "Fire Dog is Circuit City's -- is Circuit's new
17 services brand. Name released to Circuit's fall planning
18 meeting on 8/13/06."

19 Do you see that, ma'am?

20 A. I do see that.

21 Q. And this email is dated two days later, 8/15/06, correct?

22 A. Correct.

23 Q. And the email itself indicates that this is an update as
24 of 8/15/06, correct?

25 Right under BTS update in the text?

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1 A. I see 8/15. The only reference I see to 8/13 is Fire Dog.

2 Q. Actually, I may be mistaken on that.

3 And this email and the attachment are being distributed to
4 leaders, correct?

5 A. Merchandising leaders and domain leaders, yes. That would
6 be the merchant -- or the buyers. Senior buyers.

7 Q. I was referring just to the -- I don't know what you call
8 it -- appellation? It's "Leaders-", at the beginning of the
9 message, right?

10 A. Yeah, it's a mailing list.

11 Q. Gotcha. And the PowerPoint presentation that is attached
12 is a competitive edge weekly update, correct?

13 A. It looks that way, yes.

14 Q. So this is one of periodic weekly update provided within
15 Best Buy to certain leaders there, correct?

16 A. It -- again, I don't know if this is a standard update.

17 Q. I'd like to direct your attention specifically to Page 7,
18 so that's 8142-007?

19 A. Yes.

20 Q. Do you remember what Fire Dog is?

21 A. On Page 7?

22 Q. 8142.

23 A. I'm looking at Page 7, not Exhibit 7.

24 Q. Okay. So this is Page 5 of the original PowerPoint, but
25 for us it's Exhibit 8142-007.

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1 A. Okay. Yes. I'm there.

2 Q. Do you remember Fire Dog?

3 A. I do.

4 Q. And that's a service aspect -- or that was a service
5 aspect of Circuit City's business?

6 A. I believe that was their brand for their service's
7 business.

8 Q. And was that their competitive response to your Geek
9 Squad?

10 A. That's what I interpreted it. I don't know if that was
11 their intent.

12 Q. And this page provides information on, among other things,
13 information on Circuit City's Fire Dog initiative, correct?

14 A. Yes, it appears that way.

15 Q. And then, continuing over to Page 10, this is reporting on
16 certain coupons at Circuit City, correct?

17 A. It appears that way, yes.

18 Q. And the third bullet point here, "Circuit City locations
19 do report that these are redeemed heavily when they are
20 offered," right?

21 A. That's what it says.

22 Q. Okay. And does that indicate to you that there have been
23 certain reports coming out of Circuit City that -- to Best Buy
24 on the redemption of those coupons?

25 A. It does not indicate that. I'm not sure whether that

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1 would have been gathered.

2 Q. Over to Page 11 of the exhibit, Ma'am.

3 A. Yep.

4 Q. This is talking about Circuit City's shop process,
5 correct?

6 A. Yes, appears that way.

7 Q. And then -- that's referring to Circuit City, shopping at
8 competitive stores, to Best Buy, correct?

9 A. Yes, looks that way.

10 Q. And this reports that Circuit City does their shops on
11 Sunday mornings, in the third bullet point: "Sunday mornings
12 and in some markets, Monday afternoons," correct?

13 A. That's what it states.

14 Q. So again, this is the results of competitive intelligence
15 as to Circuit City and reporting it and disseminating it within
16 Best Buy, correct?

17 A. Can you repeat that?

18 Q. Yes. This document, including the PowerPoint
19 presentation, reflects the gathering of competitive information
20 about Circuit City and the dissemination of that information to
21 leaders at Best Buy?

22 A. Well, the way I would interpret it is this is somebody's
23 recap of how Circuit City does their competitive shops.

24 Q. That particular page, right?

25 A. That particular page.

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1 Q. So Best Buy knew what Circuit City was doing with respect
2 to its competitive shops, right?

3 A. Again, I think it was pretty common practice across the
4 industry to gather competitive intelligence.

5 MR. CURRAN: Your Honor, the next document I'll hand
6 out is 8141.

7 May I approach the witness?

8 THE COURT: You may.

9 BY MR. CURRAN:

10 Q. This is a shorter document, Miss Fritz, but you still may
11 need a moment to review it?

12 A. Yeah, I've read the first page.

13 Q. Are you ready for questions?

14 A. Just -- I need one minute to look back quick.
15 Okay.

16 Q. Okay. Miss Fritz, this is an email to you and others at
17 Best Buy dated November 9, 2006. Correct?

18 A. Yes, it appears that way.

19 MR. CURRAN: Your Honor, I move into evidence Exhibit
20 8141.

21 MR. SILBERFELD: No objection.

22 MR. FREITAS: No objection, your Honor.

23 THE COURT: Thank you. It will be received.

24 (Trial Exhibit 8141 received in evidence)

25 BY MR. CURRAN:

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1 Q. So again, Miss Fritz, Charles Parker is sending you this
2 email?

3 A. Yes, it looks like it's from Charles.

4 Q. And the date, November 9, 2006, that's -- now we're in
5 2006, but it's also Black Friday season, correct?

6 A. Correct.

7 Q. And that's the focus of attention reflected in this email?

8 A. Yes.

9 Q. And again, perhaps we established this before, but the
10 plans of each retailer for Black Friday are generally closely
11 held competitive information, correct?

12 A. Generally, but there are a number of websites in the --
13 during this time that have procured our ads as well as our
14 competition, through the printer, through other avenues, and
15 they're commonly known to consumers, to visit them.

16 Q. And would Best Buy visit them as well to --

17 A. Yes.

18 Q. -- to gather competitive information?

19 A. Yes, public information.

20 Q. And would Best Buy also take steps to prevent its Black
21 Friday competitive information from being put on such websites?

22 A. We would, which is one of the reasons we had encrypted
23 hard drives. But again, there was -- there were certain leaks
24 with the publishers and the printers, which were sometimes a
25 challenge.

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1 Q. So sometimes the ads of retailers would leak out and end
2 up on websites some period of time before Black Friday itself,
3 right?

4 A. Usually at the beginning of November.

5 Q. Okay. And the information that would leak out are the
6 contents of the ad, right? The actual contents of the ad?

7 A. Sometimes it was the actual ad.

8 Q. But the information that would leak out wouldn't contain
9 internal information like forecasts of the retailer?

10 A. No, no.

11 Q. Now, Miss Fritz, this is an email forwarding Circuit City
12 Black Friday pricing information, correct?

13 A. It looks that way from a -- looks like from another
14 source. So probably one of these places that would host the
15 ads.

16 Q. So someone at Best Buy, perhaps Andy Hochman, gathered
17 this information and disseminated it through certain people at
18 Best Buy, correct?

19 A. Yep, it appears that way.

20 MR. CURRAN: Your Honor, the next document is 8143.

21 May I approach the witness, your Honor?

22 THE COURT: You may.

23 BY MR. CURRAN:

24 Q. Miss Fritz, do you have 8143 in front of you?

25 A. I do.

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1 Q. Would you like a moment to review it?

2 A. Yes, please.

3 Okay.

4 Q. Miss Fritz, the email in the middle of the page from
5 Charles Parker is addressed to you and various others at Best
6 Buy, correct?

7 A. Yes.

8 Q. And it's dated November 10, 2006, correct?

9 A. It is.

10 MR. CURRAN: Your Honor, I move into evidence Exhibit
11 8143.

12 MR. SILBERFELD: No objection.

13 MR. FREITAS: No objection, your Honor.

14 THE COURT: Thank you. It will be received.

15 (Trial Exhibit 8143 received in evidence)

16 BY MR. CURRAN:

17 Q. Miss Fritz, this document again, or Exhibit 8143,
18 indicates the competitive intelligence gathering at Best Buy
19 ahead of Black Friday, correct?

20 A. Yes, it appears that way.

21 Q. And someone has set up a V: drive to gather up information
22 about competitors' plans for Black Friday, correct?

23 A. Correct.

24 Q. So, Miss Fritz, we've covered this already today that --
25 so at Best Buy, you and your colleagues were responsible for

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1 buying from a variety of finished product makers, correct?

2 A. Yes.

3 Q. Such as HP, Toshiba, and various others, right?

4 A. Yes.

5 Q. Miss Fritz, would you or your colleagues ever discuss with
6 one supplier what your margins were with respect to other
7 suppliers?

8 A. We would talk to them about our margin targets, in terms
9 of what they needed to deliver. And then in turn for us to
10 deliver our margin targets.

11 Q. What about your actual margins? Not margin targets, but
12 would you disclose to one supplier what your actual margins
13 were for that supplier and others for comparative purposes?

14 A. We would, without supplying the other vendor's name or
15 information, give them a ranking of where they were in terms of
16 meeting our margin targets.

17 Q. Why wouldn't you give the names of the other suppliers as
18 part of that process?

19 A. Because that would be confidential information we wouldn't
20 release.

21 MR. CURRAN: Your Honor, I'd like to hand around
22 Exhibit 5626.

23 THE COURT: All right.

24 MR. CURRAN: May I approach the witness?

25 THE COURT: You may.

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1 BY MR. CURRAN:

2 Q. Miss Fritz, please let me know when you've had a chance to
3 review 5626.

4 A. Okay.

5 Okay.

6 Q. Miss Fritz, Exhibit 5626 is an email from Kevin Winneroski
7 to certain folks at HP and Compaq, copying you and a colleague
8 of yours at Best Buy, right?

9 A. It appears that way, yes.

10 Q. And it's dated March 31, 2004, correct?

11 A. Yes.

12 MR. CURRAN: Your Honor, I move for the admission
13 into evidence of Exhibit 5626.

14 MR. SILBERFELD: No objection.

15 MR. FREITAS: No objection, your Honor.

16 THE COURT: Thank you. It will be received.

17 (Trial Exhibit 5626 received in evidence)

18 BY MR. CURRAN:

19 Q. Now, Miss Fritz, Mr. Winneroski, who we heard from earlier
20 in court today, reported to you, correct?

21 A. He did.

22 Q. And he copied you on this particular email, correct?

23 A. Appears that way, yes.

24 Q. And in this email, to folks at HP and Compaq -- who, by
25 the way, merged with one another, correct?

FRITZ - CROSS EXAMINATION / CURRAN

1 A. At some point in time. I don't recall when, but, yes.

2 Q. And in this email, Mr. Winneroski provides confidential
3 business information as to suppliers other than HP and Compaq
4 to those companies, correct?

5 A. It appears that way, yes.

6 Q. So this is Mr. Winneroski sharing nonpublic, confidential
7 information of suppliers to another supplier, correct?

8 A. It appears that way, yes.

9 Q. Did you receive this email?

10 A. I don't recall this specific email, but I am copied on it.

11 Q. Do you recall following up with Mr. Winneroski or doing
12 anything after receiving this?

13 A. I don't recall.

14 Q. Do you recall working with Mr. Winneroski in preparing
15 this email?

16 A. I do not.

17 Q. Did you authorize him to send this email?

18 A. I did not.

19 Q. Miss Fritz, in your judgment, was the sending of this
20 email and the contents, specifically on margins of other
21 suppliers, consistent with Best Buy's code of ethics?

22 A. I would say it was not. It's not common practice.

23 Q. And I'd like to look at 60 -- what does EVA stand for,
24 Miss Fritz?

25 A. I'm assuming in this instance it means economic value add.

FRITZ - CROSS EXAMINATION / CURRAN

1 Q. So in this paragraph, toward the bottom of the first page,
2 Mr. Winneroski is telling the folks at HP/Compaq the economic
3 value add per unit of various suppliers to Best Buy, correct?

4 A. That's what it looks like, yes.

5 Q. And economic value add is profit for Best Buy, right?

6 A. It's a calculation that's used in the industry, and any
7 financial industry, around -- a way to calculate profit. But
8 it's not commensurate with gross profit, per se.

9 Q. And then on the next page, there are -- at the very top,
10 under the paragraph identified with a "1", there are
11 percentages given and those appear to be something called
12 uneroded POS GM. Do you see that?

13 A. I do.

14 Q. And POS is point of sale?

15 A. Yes.

16 Q. And GM is gross margin?

17 A. Yes.

18 Q. So here, Best Buy is providing to HP and Compaq the
19 uneroded point of sale gross margin for various other vendors,
20 correct?

21 A. It appears that way, yes.

22 Q. Including Toshiba?

23 A. Including Toshiba.

24 Q. And that's Toshiba confidential information, correct?

25 A. I would assume so.

FRITZ - CROSS EXAMINATION / CURRAN

1 Q. And then right below that there's actual eroded gross
2 margin, and again, percentages given there, correct?

3 A. Yes.

4 Q. Okay. And eroded has to do with after the end of life of
5 the product, right?

6 A. Yes, as well as markdowns and other sell-through credits.

7 Q. So it's another measurement of gross margin, correct?

8 A. Correct.

9 Q. Now, Ma'am, can you remind me: You used the expression
10 MDF in your answers this morning. Market development funds?

11 A. Yes.

12 Q. And those are cash payments -- or money payments from
13 vendors to Best Buy, right?

14 A. They are. They are not always cash payments. Sometimes
15 they are deducted from the invoice.

16 Q. But sometimes they're off invoice?

17 A. It depends, yes.

18 Q. And so, if I'm getting this right, so vendors sell product
19 to Best Buy, so ordinarily, Best Buy is paying money to the
20 vendors for product, right?

21 A. Sorry, say that again.

22 Q. The vendors are selling product to Best Buy?

23 A. Yes.

24 Q. So ordinarily, it's Best Buy paying money to the vendors,
25 right?

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1 A. I don't see it that way.

2 Q. Well, isn't Best Buy ordinarily purchasing product from
3 its suppliers?

4 A. We're purchasing product for them so we're paying them
5 money for the cost of the product. The vendor is paying us
6 additional dollars to collectively market the product.

7 Q. Okay. So the ordinary part of the transaction is money
8 going from Best Buy to the suppliers or vendors, right?

9 A. Correct.

10 Q. But with MDF funds and other back-end funds, it's money
11 going from the supplier or vendor to Best Buy?

12 A. Correct.

13 Q. Okay. Is it a rebate?

14 A. No, not always.

15 Q. Is it always 100 percent for market development
16 promotions?

17 A. Yeah, I think we talked about it earlier today. So market
18 development funds are generally used to do different promotions
19 or advertising or marketing, to promote the product and the
20 vendor brand. There are some cases where it is not all used.

21 Q. Right. It's not all used for market development, right?

22 A. Depending upon the time period or the actual promotion,
23 yes.

24 Q. And sometimes Best Buy gets to keep the market development
25 funds even if they're not spent for market development,

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1 correct?

2 **A.** Sometimes, but generally it's all -- it's directed towards
3 the marketing programs.

4 **Q.** But in the cases that it's not directed toward the
5 marketing programs, that's additional profit dollars for Best
6 Buy, correct?

7 **A.** Yeah. It's part of our overall gross margin calculation.

8 **MR. CURRAN:** Your Honor, the next document I'd like
9 to hand out is 7137.

10 May I approach the witness, your Honor?

11 **THE COURT:** You may.

12 **BY MR. CURRAN:**

13 **Q.** Miss Fritz, if you can, let me know when you've had a
14 moment to review 7137, please.

15 **A.** Okay.

16 Okay.

17 **Q.** Okay. So Miss Fritz, this document is an email from you
18 to certain colleagues of yours -- well, copying certain
19 colleagues of yours, and addressed to certain folks at AMD.
20 Correct?

21 **A.** Correct.

22 **Q.** And it's dated November 16, 2006, correct?

23 **A.** It appears that way, yes.

24 **MR. CURRAN:** Your Honor, I move into evidence Exhibit
25 7137.

FRITZ - CROSS EXAMINATION /CURRAN

1 **MR. SILBERFELD:** No objection.

2 **MR. FREITAS:** No objection, your Honor.

3 **THE COURT:** Thank you. It will be received.

4 (Trial Exhibit 7137 received in evidence)

5 **MR. CURRAN:** Thank you, your Honor.

6 **BY MR. CURRAN:**

7 **Q.** So Miss Fritz, this exhibit's got three emails as part of
8 it, right?

9 **A.** Yes.

10 **Q.** Let's start with the first in time, and that's an email
11 from a gentleman by the name of Tom Rogers at AMD, correct?

12 **A.** Correct.

13 **Q.** And AMD makes, what, microprocessors?

14 **A.** They do.

15 **Q.** That are in notebook computers and other computing
16 products sold by Best Buy, correct?

17 **A.** Correct, as well as everyone in the industry.

18 **Q.** Okay. So AMD is a competitor of Intel, right?

19 **A.** Yes.

20 **Q.** And in this first email, Mr. Rogers is telling folks at
21 Best Buy that AMD is cutting back on its MDF to Best Buy,
22 correct?

23 **A.** I don't recall this specific email, but that's what it
24 says here.

25 **Q.** Okay. And then Mr. Bonfig -- who's a colleague of yours